tutional provision; that a wife cannot convey by her separate instrument the land which is the homestead, or any part thereof, or interest therein, to any third person, and that her separate contract to convey the land in the future would have no more validity. The other two judges were inclined toward a less strict and technical rule and were in favor of construing these acts as a land contract enforceable in equity. Although this may be the more equitable view, it will be seen upon examination of the cases upon the joinder of the wife in the conveyance of the husband that the great majority of the courts require a very strict compliance with the provisions of the statutes and constitutions. *Lies* v. *Diablar,* 12 Cal. 328; *Kitterlin* v. *Milwaukee Mechanics Mut. Ins. Co.,* 134 Ill. 647; *Eldredge* v. *Pierce,* 90 Ill. 474. Deeds were separate and both were held void in *Poole* v. *Gerrard,* 6 Cal. 72. Husband and wife must join in the same joint instrument, *Pryne* v. *Pryne* (1902), 116 Iowa 82, 89 N. W. 108; *Loomis* v. *Loomis* (1905), — Cal. —, 82 Pac. 679. Instrument void for non-joinder cannot thereafter be ratified by the wife, *Alvis* v. *Alvis* (1904), 123 Iowa 546; *Howell* v. *McCrie,* 36 Kas. 636; *Ott* v. *Sprague,* 27 Kas. 620; *Christian* v. *Clark,* 78 Tenn. 630. Wife cannot release her homestead estate by her separate deed, *Dickinson* v. *McLane,* 57 N. H. 31. Wife failed to sign first mortgage but signed the second. *Held,* that she could not by waiving exemption give first mortgage priority over second, *Mattingly's Adm'r* v. *Hazel* (1904), 25 Ky. L. R. 1483, 78 S. W. 178. For conveyance by husband after abandonment by wife, see 5 MICH. LAW REV. 286.

HOMICIDE—PENAL STATUTES—CONSTRUCTION.—One Conrad and one John Doe broke and entered a dwelling house in the night time, and while engaged in the perpetration of a burglary an alarm was given and the house was surrounded by policemen. The burglars attempted to escape and when about thirty feet from the house, and on another lot, one of them shot and killed a policeman who had attempted to arrest them. Conrad was indicted under a statute which reads as follows: "Whoever purposely, and either by deliberate and premeditated malice, or by means of poison, or in perpetrating, or attempting to perpetrate, any rape, arson, robbery, or burglary, kills another, is guilty of murder in the first degree and shall be punished by death." *Held,* the killing was in perpetration of the burglary, and that it was murder in the first degree. Also that it was immaterial which one committed the act, for it being in furtherance of a common design, though the killing was not a part of the prearranged plan, both burglars are equally guilty of the homicide. *Conrad, alias Castor* v. *State* (1906), — Ohio —, 78 N. E. Rep. 957.

The decision in this case must be based upon the answer to the question, whether the killing under such circumstances was, either in law or in fact, in aid or furtherance of an attempt or purpose on the part of Conrad to commit a burglary. In other words, was the killing of the policeman a part of the res gestae of the burglary. The majority opinion holds that the act of killing was a part of the res gestae and, therefore, that Conrad was guilty of murder in the first degree. The rule of strict construction of penal statutes does not require us to go so far as to defeat the purpose of the statute by a technical application of the rule. *United States* v. *Hartwell,* 73 U. S. 385, 395, 396, 18

L. Ed. 830. There is an important distinction between the definition of a burglary and a statement of the circumstances which may have surrounded "the perpetration of" a burglary. The former is invariable. The latter varies with each case. By definition the burglary is the breaking and entering the house in the night time with the intent to commit a felony therein, and after such acts were done it was a burglary whether the felony was executed or not. On the other hand the things which occur "in the perpetration of the crime" change with every case. All these possible circumstances are set forth in the following cases: *Commonwealth* v. *Eagan,* 190 Pa. 18, 42 Atl. Rep. 374; *Dolan* v. *People,* 64 N. Y. 485; *Bissot* v. *State,* 53 Ind. 408; *State* v. *Brown,* 7 Oreg. 186, 7 Oreg. 208, 209. For a case in which there was a previous agreement not to hurt any one, see, *People* v. *Vasquez,* 49 Cal. 560. In a case of conspiracy to commit a robbery where one party remained in a buggy fifty yards away, the one so remaining in the buggy was convicted of murder in the first degree. *Loveland* v. *State,* 70 Ohio St. Rep. 514, 72 N. E. 1161. See also cases cited in the 21 AMER. & ENG. ENC. LAW (2 Ed.) 141, note 2. PRICE and CREW, JJ., dissenting, take the view that the perpetration of the burglary was complete when the house was entered, or at least while the burglars were within the house; and that, as they carried nothing away in their flight, the crime of burglary was complete when they left the house, and, therefore, the killing of the policeman thirty feet from the house was not in perpetration of the burglary, or a part of the res gestae of the burglary. In support of this argument each case cited *supra* was carefully reviewed and distinguished from the principal case. That the words of this penal statute are not technical and must be strictly construed, and cannot be extended by implication to cover cases not strictly within their terms, see *Hall* v. *State,* 20 Ohio 8; *Shultz* v. *Cambridge,* 38 Ohio St. 659; *White* v. *Woodward et al.,* 44 Ohio St. 347, 7 N. E. 446.

INJUNCTION—BOYCOTTS—RIGHT TO USE THE SYMPATHETIC STRIKE.—A manufacturer of building materials declared for the "open shop" and his employees who were union men went on a strike. The unions embracing the building trade, through their officers, notified the boss carpenters that the manufacturer's goods were "unfair" and that union men would not handle them, and that if any boss carpenter did handle the goods, his employees would be called out on a strike. Some of the boss carpenters broke their contracts with the manufacturer. Others who had made no contract refrained from using the goods. *Held,* that this was a wrongful interference with plaintiffs' right to a free market, and that the manufacturer is entitled to an injunction, restraining the officers of the union from directing or ordering a strike. *Alfred W. Booth & Bro.* v. *Burgess et al.* (1906), — N. J. Eq. —, 65 Atl. Rep. 226.

Sir Frederick Pollock in his work on TORTS, p. 317, lays down the rule that "Persuading or inducing a man, without unlawful means, to do something he has a right to do, though to the prejudice of a third person, gives that person no right of action, whatever the persuader's motives may have been." Citing the case of *Allen* v. *Flood,* A. C. 1, 67 L. J. Q. B. 119, which